

REMARKS

Applicant has carefully reviewed and considered the Office Action mailed on September 24, 2003, and the references cited therewith.

No claims are amended. Claims 1-34 and 37-41 are now pending in this application.

§102 Rejection of the Claims

Claims 1-7, 12-15, 18-23, 26-31, 34, 37-38, and 41 were rejected under 35 USC § 102(e) as being anticipated by Corbepin (U.S. Patent No. 6,269,243). This rejection is respectfully traversed, as a prima facie case of anticipation has not been established. Applicant reserves the right to swear behind this reference at a later date.

Each of the rejected independent and dependent claims recites: “a controller that controls RF emissions of the wireless phone to maintain the RF emissions below a predetermined level.” The Office action states that Corbepin et al. inherently teaches “that there is something to control the power level of radio communication means R. ‘The power level is lowered in such a way as not to allow such interference’: this implicitly teaches that an RF emission level above which interference will occur has to be determined in order for means of authority 5 to control the RF emissions level of means R.”

Applicant respectfully disagrees because the Office Action has not established a *prima facie* case of inherency because, as recited in MPEP § 2112, “In relying upon the theory of inherency, the examiner must provide basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art,” citing Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).

The Office Action asserts that the allegedly inherent characteristic is “implicit”, not that it is necessary. Applicant respectfully submits that “a controller that controls RF emissions of the wireless phone to maintain the RF emissions below a predetermined level.” does not necessarily flow from Corbepin et al. because Corbepin et al. does not teach or suggest the existence of a predetermined level that is used for control of the power levels of cell phones. In fact, Corbepin et al. infers that it is a combination of ER2 and the antenna that reduce RF emissions. There are several different embodiments that can come to mind to accomplish the lower power level of

Corbefin et al. One such embodiment is that the antenna is close enough to the devices that the power requirements are low enough with no predetermined level required. In fact, this is most likely the case in Corbefin et al., which teaches directly away from actively controlling based on a predetermined level. Since the feature does not necessarily flow from the teachings of Corbefin et al., the rejection should be withdrawn.

Claims 3, 12, 14, 18, 26, 34, 37 and 41 all recite an interface device that registers wireless phones as roaming subscribers on a cellular network. The Office Action does not indicate where Corbefin et al. describes this feature. Further, the transponder 4 in Corbefin et al. appears to simply transmit and receive signals, and match them up. There is no mention of registering subscribers as claimed.

§103 Rejection of the Claims

Claims 8-11, 16-17, 24-25, 32-33, and 39-40 were rejected under 35 USC § 103(a) as being unpatentable over Corbefin et al. in view of Coash (U.S. Patent No. 4,737,771). This rejection is respectfully traversed. In addition to each of these claims depending from a claim already believed allowable, Corbefin et al. is not properly combinable with Coash, and even if combined do not teach all of the elements of the claims.

Coash fails to teach the detection of an unsupported cellphone type as claimed in claims 8, 12, 16, 18, 24, 26, 32, 34, 39, and 41. Coash detects when a carrier signal has been on too long. 18 milliseconds is cited at col. 3, line 33-34. Such a long carrier signal is an indication of jamming, and an attempt to defeat a security system. Thus, Coash does not discriminate RF emissions above a certain level, nor does it detect unsupported cellphone types. Further, one would not look to security system art to improve a cellphone communication system aboard an aircraft.

The Office Action must provide specific, objective evidence of record for a finding of a suggestion or motivation to combine reference teachings and must explain the reasoning by which the evidence is deemed to support such a finding. *In re Sang Su Lee*, 277 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002). The Office Action stated “It would have been obvious to one of ordinary skill in the art at time the invention was made to include a security system as disclosed in Coash since it keeps other electronic devices on board the aircraft from malfunctioning and

provides safer flights.” This is a mere conclusory statement of subjective belief. Applicant respectfully submits that the Office Action has not provided objective evidence for a suggestion or motivation to combine the references. Still further, it is not directed to the same problem solved. An unsupported cellphone type may be detected by the presently claimed invention prior to it transmitting at an interfering power level. There is nothing in Coash that describes such a problem, nor does Coash provide a solution for that problem. Coash merely detects if a carrier signal has been on too long, thus serving as an indication of jamming. It cannot detect if something may be a problem in the future.

Analogous art is all art that is either in the field of technology of the claimed invention or deals with the same problem solved by the claimed invention even though outside the field of technology. *In re Wood*, 599 F.2d 1032, 202 USPQ 171 (CCPA 1979). Coash is directed to a security system, not a cell phone system. It detects when jamming is occurring to avoid false alarms due to interference. It does not deal with the same problem solved by the claimed invention. This also leads one away from attempting to combine the references.

With regard to claims 9-11, 17, 25, 33 and 40, the Examiner states that “Corbefin et al. fail to teach transmitting and receiving cellular signals to and from wireless phone when the aircraft is on the ground.” Applicants agree, however, the assertion that this is “nothing other than normal cellular communications.” Is traversed. The Examiner is requested to provide an affidavit or reference to support such assertion.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6972 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

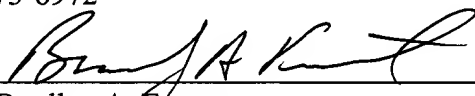
DAVID GILBERT

By his Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6972

Date 10-24-2003

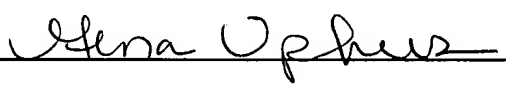
By


Bradley A. Forrest
Reg. No. 30,837

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 24 day of October, 2003

Gina M. Uphus

Name


Signature